

Message Text

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FOLLOWING SENT ACTION SECSTATE WASHDC FROM MEXICO JUN 28
REPEATED

QUOTE
MEXICO 4674

E.O. 11652: GDS
TAGS: PFOR, MX
SUBJECT: PROTECTION OF DIPLOMATS. DRAFT ILC ARTICLES.

REF: MEXICO 0832

1. FOLLOWING UP DISCUSSION WITH FONSEC AND TELLO (REFTEL)
FELDMAN (L) AND EMBOFF MET WITH GONZALES GALVEZ TO DISCUSS DRAFT
ILC ARTICLES. GONZALEZ INFORMED US THAT, CONSISTENT WITH ITS
GENERAL PRACTICE, GOM WOULD NOT SUBMIT COMMENTS ON DRAFT ARTICLES
TO SYG IN ADVANCE OF UNGA. GOM INTERSECRETARIAL GROUP NOW FORMUL-
ATING POSITION ON TERRORISM ITEMS BUT MATTER IS STILL UNDER STUDY.
HE AGREED TO BE IN TOUCH WITH USG FOR FURTHER CONSULTATIONS WHEN
GOM POSITION MORE ADVANCED.

2. GONZALEZ WAS WILLING, HOWEVER, TO REVIEW ARTICLES AND
POSSIBLE APPROACHES ON PRELIMINARY, INFORMAL BASIS. HE NOTED THAT
BASIC MEXICAN PROBLEMS WITH DRAFT ARTICLES TURNED ON (1) RIGHT OF
ASYLUM (GOM DESIRES TO INCLUDE PROVISION SIMILAR TO ARTICLE 6
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OAS CONVENTION), (2) DISPUTE SETTLEMENT PROCEDURES (GOM WOULD

FAVOR MORE GENERAL PROVISION ALLOWING PARTIES TO CHOOSE MEANS OF SETTLEMENT AND POSSIBLY PROVIDING FOR COMPULSORY RECOURSE TO INTERNATIONAL COURT OF JUSTICE IF THEY CANNOT AGREE ON OTHER PROCEDURE; GOM DOES NOT FAVOR ARBITRATION OR CONCILIATION COMMISSIONS) AND (3) SOME TECHNICAL PROBLEMS WITH EXTRADITION PROVISIONS.

3. FELDMAN OUTLINED US OBJECTIVES TO BUILD INTERNATIONAL CONSENSUS THAT CRIMES AGAINST DIPLOMATS NOT PERMISSIBLE TACTIC AND TO DENY SAFE-HAVEN TO PERPETRATORS. HE REVIEWED NEGOTIATING HISTORY OF OAS CONCENTION INCLUDING UNANIMOUS OAS RESOLUTION THAT SUCH CRIMES ARE COMMON CRIMES, REGARDLESS OF MOTIVATION, WHICH FOLLOWED DRAMATIC STATEMENT BY FONSEC CARILLO FLORES TO THAT EFFECT. FELDMAN NOTED USG CONCERN AT REMARKS OF MEXICAN MEMBER ILC INDICATING POSSIBLE CHANGE IN GOM POSITION AND REASSURANCE GIVEN BY TELLO (REFTEL) THAT MEXICO DID NOT REGARD ATTACKS ON DIPLOMATS AS POLITICAL CRIME AND WOULD NOT GIVE ASYLUM IN SUCH CASES. GONZALEZ NOTED THAT CARILLO FLORES' STATEMENT WAS UNIQUE, REPRESENTED A CHANGE IN MEXICAN POLICY AT THE TIME BASED ON THE NEW MEXICAN LEGISLATION ON TERRORISM, AND WOULD NOT BE REPEATED. HE SAID THAT MEXICO WOULD FOLLOW PRACTICE AS DESCRIBED BY TELLO BUT WOULD NOT AGREE IN WRITING TO THIS PRINCIPLE. HE NOTED THAT SOME TWENTY YEARS AGO MEXICAN AMBASSADOR TO EL SALVADOR WAS DISMISSED AFTER REFUSING ASYLUM TO KIDNAPPER WHO WAS PROMPTLY EXECUTED BY LOCAL AUTHORITIES. IN A SIMILAR SITUATION IN BRAZIL IN EARLY SIXTIES MEXICAN EMBASSY GAVE ASYLUM TO KIDNAPPER OF SECOND SECRETARY AT ANOTHER EMBASSY.

4. WHEN QUERIED AS TO WHY GOM MORE CAUTIOUS ABOUT ASYLUM IN CONTEXT OF CRIMES AGAINST DIPLOMATS THAN IN AIR SECURITY CONVICTIONS, GONZALEZ NOTED THAT FORMER CASES MORE FREQUENTLY MOTIVATED BY POLITICAL CONSIDERATIONS. FELDMAN ARGUED THAT THIS VERY REASON WHY IT WAS NECESSARY TO OBTAIN CLEAR INTERNATIONAL POSITION THAT SUCH CRIMES CANNOT BE EXCUSED BY POLITICAL MOTIVES. THESE ATTACKS MUST BE PROSCRIBED NOT ONLY BECAUSE OF THEIR CRUELTY BUT BECAUSE THEY ATTACK THE MEANS OF INTERCOURSE BETWEEN STATES AND DELIBERATELY ATTEMPT TO CREAT PROBLEMS IN RELATIONS BETWEEN STATES. GONZALEZ AGREED THAT THESE CRIMES MUST BE DISCOURAGED BUT EMPHASIZED THE IMPORTANCE OF NATIONAL MEASURES IN THIS REGARD.

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5. DESPITE FOREGOING, GONZALEZ GALVEZ APPEARED OPEN TO FURTHER DISCUSSION WITH USG WITH VIEW TO WORKING OUT FORMULA ACCEPTABLE TO BOTH SIDES. IN PARTICULAR, HE INDICATED, AS A PERSONAL VIEW, THAT IT MIGHT BE POSSIBLE TO REACH AN UNDERSTANDING WHICH PRESERVED THE OBLIGATION TO PROSECUTE IN ANY EVENT. HE KNEW OF NO LEGAL IMPEDIMENT TO PROSECUTION IN A CASE IN WHICH ASYLUM PRECLUDED EXTRADITMION. FELDMAN ALSO ASKED, ON A PURELY

PERSONAL BASIS, WHETHER IT MIGHT BE POSSIBLE TO WORK OUT A FORMAL INTERPRETATION OF ARTICLE 6 OF THE OAS CONVENTION ALONG THE LINES OF CARILLO FLORES STATEMENT OR LIMIT THE IMPLICATIONS OF ARTICLE 6 TO EXTRADITION. GONZALEZ SAID HE WOULD DISCUSS THAT WITH FONSEC RABASA AND ASKED WHETHER SUCH AN INTERPRETATION WOULD PERMIT THE US TO ACCEPT A SIMILAR ARTICLE IN THE UN CONVENTION. FELDMAN ANSWERED THAT IN GOOD FAITH HE COULD NOT PROMISE THAT IT WOULD, BUT THAT HE DID NOT RULE OUT SUCH A POSSIBILITY DEPENDING ON THE SITUATION IN NEW YORK.

6. IN RESPONSE TO QUESTION WHETHER GOM WOULD SUPPORT THE COMPLETION OF WORK ON THE DRAFT ARTICLES AT UNGA THIS FALL, GONZALEZ GALVEZ REPLIED THAT THE UNGA MANDATE TO TRY TO DO SO WAS QUITE CLEAR. HE SAID HE WAS THINKING OF A SCENARIO IN WHICH 6TH COMMITTEE WOULD TAKE UP THE DRAFT ARTICLES AS THE SECOND ITEM, FOLLOWING ILC REPORT, FOR A BRIEF GENERAL DEBATE AFTER WHICH A DRAFTING COMMITTEE OF SOME TWENTY-FIVE MEMBERS COULD BE FORMED WITH A VIEW TO SUBMISSION OF A DRAFT IN NOVEMBER. HE ASKED WHETHER THIS PROCEDURE SEEMED REASONABLE. FELDMAN THANKED HIM FOR ASKING FOR A US VIEW AND INDICATED HE WOULD BE IN TOUCH WITH DEPARTMENT AND NEW YORK AND WOULD GIVE HIM A REACTION PROMPTLY.

7. THERE WAS ALSO SOME DISCUSSION OF ARTICLES 5 AND 6 OF ILC DRAFT IN WHICH FELDMAN NOTED THE SCOPE FOR TRADITIONAL PROSECUTORIAL DISCRETION IN CASES IN WHICH THE LIFE OF A VICTIM IS THREATENED BY KIDNAPPERS NOT SUBJECT TO CONTROL BY THE AUTHORITIES. GONZALEZ NOTED THAT THE SPANISH VERSION "ENJUICIAR" APPEARS TO REQUIRE ACTION INVOLVING JUDICIAL AUTHORITIES. THIS TROUBLES GOM BECAUSE ASYLUM AND EXTRADITION MATTERS ARE HANDLED BY ADMINISTRATIVE RATHER THAN JUDICIAL PROCESS IN MEXICO.

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